

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal Number 08-157 (RHK/FLN)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	PLEA AGREEMENT AND
)	SENTENCING STIPULATIONS
DANTE KENNETH BENSON-HENRY,)	
)	
Defendant.)	

The United States of America, by and through its attorneys, Frank J. Magill, Jr., Acting United States Attorney for the District of Minnesota, and Nancy E. Brasel and Erica H. MacDonald, Assistant United States Attorneys, and the defendant Dante Kenneth Benson-Henry, by himself, and with his attorney, Robert Paule, agree to resolve this case on the terms and conditions that follow. This plea agreement binds only the defendant and the United States Attorney's Office for the District of Minnesota. This agreement does not bind any other United States Attorney's Office or any other federal or state agency.

PLEA AGREEMENT

The defendant and the government agree, pursuant to Rule 11 as follows:

1. Charges. As to the charges, the parties agree as follows:
 - a. The defendant agrees to plead guilty to:
 - i. Count 1 of the Indictment charging him with Armed Bank Robbery in violation of 18 U.S.C. § 2113(a) and (d); and

- ii. Count 2 of the Indictment charging him with Use of a Firearm During a Crime of Violence, in violation of 18 U.S.C. § 924(c)(1)(A).
 - b. If the Court accepts the plea agreement, the United States agrees not to charge the defendant for committing the robbery of the TCF Bank located at 5937 Nicollet Avenue, Minneapolis, Minnesota, on March 27, 2008.
2. Factual Basis. The parties agree on the following factual basis for the plea agreement:
- a. On April 23, 2008, the defendant robbed the TCF Bank located inside the Cub Foods Store, 6775 York Avenue, Edina, Minnesota. After entering the bank on that day, the defendant approached a victim teller and handed her a demand note which stated: "This is a holdup, I have a gun. 100's, 50's, and 20's only, put the money on the counter and act normal." As the victim teller started putting \$20 bills on the counter, the defendant stated: "Give me your hundreds."
 - b. The defendant left the bank with \$5,150 of the bank's deposits.
 - c. At the time of the robbery, the deposits of the TCF Bank were insured by the Federal Deposit Insurance Corporation.

- d. After robbing the bank, the defendant led law enforcement officers on a high-speed chase, first by car and then by foot. During the car chase, the defendant brandished a firearm.
 - e. The defendant admits that he knowingly carried and used a firearm, namely a Dan Wesson Arms revolver, serial number 264002, during and in relation to the bank robbery.
2. Statutory Penalties. The parties agree that the counts of conviction carry the following statutory penalties:
- a. Count 1 of the Indictment carries the following statutory penalties:
 - i. a term of imprisonment of twenty-five years;
 - ii. a term of supervised release of not more than five years;
 - iii. a fine up to \$250,000; and
 - iv. a mandatory special assessment of \$100.00.
 - b. Count 2 of the Indictment carries the following statutory penalties:
 - i. a maximum term of imprisonment of life;
 - ii. a mandatory minimum sentence of seven years;
 - iii. a term of supervised release of not more than five years;
 - iv. a fine up to \$250,000; and

v. a mandatory special assessment of \$100.00.

3. Revocation of Supervised Release. The defendant understands that, if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.
4. Role of the Guidelines as Advisory. The defendant will be sentenced in accordance with the Federal Sentencing Act, 18 U.S.C. § 3551 et seq. The parties are aware and agree that the federal Sentencing Guidelines are advisory to, but not binding on, the Court.
5. Guideline Calculations: The parties stipulate that the following guideline calculations apply:
 - a. Guideline Range: The parties agree that the defendant's guideline range is a term of imprisonment of 141 to 155 months. This is based on the following:
 - i. Guideline Range for Count 1:
 - (1) Base Offense Level. The defendant committed the offense of armed bank robbery; accordingly, the base offense level is 20. U.S.S.G. § 2B3.1(a).

- (2) Specific Offense Characteristics. The parties agree that the offense level should be increased by:
- (a) 2 levels because the property of a financial institution was taken, § 2B3.1(b)(1); and
 - (b) 2 levels because the words in the demand note constituted a threat of death, § 2B3.1(b)(2).
- (3) Chapter 3 Adjustments. The parties agree that the defendant's offense level should be increased by 2 levels because the defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer. U.S.S.G. § 3C1.2. The parties further agree that none of the other adjustments from Chapter 3A-C apply.
- (4) Acceptance of Responsibility. If the defendant (1) testifies truthfully during the change-of-plea and sentencing hearings; (2) provides full, complete, and truthful disclosures to the United States Probation Office; and (3) engages in no other conduct

which is inconsistent with acceptance of responsibility before the time of sentencing, the government agrees to recommend that the defendant receive a 2-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a), and to move for an additional 1-level reduction under § 3E1.1(b). Whether there will be a reduction for acceptance of responsibility shall be determined by the Court in its discretion.

(5) Criminal History Category. Based on the information available at this time, the parties believe that the defendant's criminal history category is III. U.S.S.G. §§ 4A1.1-4A1.3 and 4B1.1(b).

(6) Guideline Range. If the offense level is 23 and the criminal history category is III, the applicable Sentencing Guidelines range as to Count 1 of the Indictment is a term of imprisonment of 57 to 71 months.

ii. Guideline Range for Count 2: The applicable Guidelines range for Count 2 is a term of imprisonment of 84 months. U.S.S.G. § 2K2.4. This 84 months must be imposed independently of the

sentence to be imposed on Count 1. U.S.S.G.

§ 5G1.2(a).

- b. Fine Range. If the offense level is 23, the fine range is \$10,000 to \$100,000. U.S.S.G. § 5E1.2(c)(3).
 - c. Supervised Release. The Sentencing Guidelines require a term of supervised release of at least three years but not more than five years if a term of imprisonment of more than one year is imposed. U.S.S.G. §§ 5D1.1(a), 5D1.2(a)(2).
6. Discretion of the Court. The foregoing stipulations are binding on the parties but do not bind the Court. The parties understand that the application of the Sentencing Guidelines is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable guideline factors and the applicable criminal history category. If the Court determines that the applicable guidelines calculations or the defendant's criminal history category is different from that stated above, neither party may withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations.
7. Special Assessments. The defendant is required to pay a special assessment of \$200, pursuant to 18 U.S.C. § 3013(a)(2)(A).

8. Forfeiture. The defendant agrees to forfeit to the United States, pursuant to 18 U.S.C. § 924(d), in conjunction with 28 U.S.C. § 2461(c), a Dan Wesson Arms revolver, serial number 264002, together with any associated ammunition and accessories. The defendant agrees that this firearm is subject to forfeiture based on his plea of guilty to Counts 1 and 2 of the Indictment.

The defendant agrees that, pursuant to Fed. R. Crim. P. 32.2(b)(2) and (3), the Court may enter a Preliminary Order of Forfeiture for the above-described firearm immediately upon the entry of the defendant's guilty plea, which order will be final as to the defendant immediately upon filing of the Preliminary Order of Forfeiture. The order of forfeiture shall be made a part of the defendant's sentence and included in the Judgment.

The defendant agrees to waive the requirements of Fed. R. Crim. P. 32.2 with respect to the imposition of any forfeiture sanction carried out in accordance with this Plea Agreement, and further agrees to waive any claims, defenses or challenges to the forfeiture of the above-described firearm arising under the Constitution, and agrees that he will not contest or challenge in any manner (including direct appeal, habeas corpus, or any other means) such forfeiture on any grounds.

Nothing in this agreement shall be construed as a waiver of the United States' right to proceed against any of the defendant's property not identified in this agreement if said property, real or personal, tangible or intangible, is subject to forfeiture under federal law.

9. Waivers of Appeal and Collateral Attack. The defendant understands that by pleading guilty he will waive all rights to a trial on the question of his guilt. In the event that the Court accepts the plea agreement, including the guideline calculations set out in paragraph 6, and sentences the defendant at or below 155 months imprisonment, the defendant waives his right to appeal or to contest, directly or collaterally, the sentence on any ground.
10. Complete Agreement. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

FRANK J. MAGILL, JR.
Acting United States Attorney

Dated:

BY: ERICA H. MACDONALD
AND: NANCY E. BRASEL
Assistant U.S. Attorneys

Dated:

DANTE KENNETH BENSON-HENRY
Defendant

Dated:

ROBERT PAULE
Attorney for Defendant